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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES  
11

12 **ANTELOPE VALLEY**  
13 **GROUNDWATER CASES**

14 Included Actions:

14 Los Angeles County Waterworks District  
15 No. 40 v. Diamond Farming Co., Superior  
16 Court of California, County of Los  
17 Angeles, Case No. BC 325201;

17 Los Angeles County Waterworks District  
18 No. 40 v. Diamond Farming Co., Superior  
19 Court of California, County of Kern, Case  
20 No. S-1500-CV-254-348;

21 Wm. Bolthouse Farms, Inc. v. City of  
22 Lancaster, Diamond Farming Co. v. City of  
23 Lancaster, Diamond Farming Co. v.  
24 Palmdale Water Dist., Superior Court of  
25 California, County of Riverside, Case Nos.  
26 RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to The Honorable Jack Komar

**DECLARATION OF BRUCE N. NELSON  
IN LIEU OF DEPOSITION FOR PHASE 4  
TRIAL**

**DECLARATION**

I, Bruce N. Nelson, declare:

1. I am a senior groundwater hydrologist at EDE Consultants and nationally registered professional engineer and I have been working in the field of hydrology and water resources engineering for close to thirty years. I have been retained as a Water Resources Consultant for Rio Tinto Minerals, Boron Operations (U.S. Borax), a party to this action, in order to provide U.S. Borax with technical assistance with regards to groundwater hydrology and supply. I am providing this declaration in lieu of deposition. This declaration applies only to the categories I have filled in. The items left blank or crossed out do not apply to me. The facts herein represent my further investigation into issues I previously explored with regards to U.S. Borax's Response to Discovery Order for Phase 4 Trial. I have personal knowledge of each fact herein and would testify competently thereto under oath.

**Property Ownership and Parcel Size**

2. I am informed and on that information hereby declare that U.S. Borax and its subsidiaries and/or holding companies own property that overlies the Antelope Valley Area of Adjudication as decided by this Court. The land is in Kern County and is identified by the APNs listed in Exhibit A. A true and correct copy of Exhibit A is attached hereto and incorporated herein.

3. U.S. Borax claims groundwater rights only as to the properties listed in Exhibit A.

4. For each APN identified in Exhibit A, the acreage within the Antelope Valley Area of Adjudication is tabulated and displayed in the second column of Exhibit A.

5. For each APN identified in Exhibit A, the purchase date is displayed in the third column of Exhibit A.

6. The following are all individuals/entities appearing on the title for the above identified APNs from January 1, 2000 to the present: U.S. Borax and its subsidiaries and/or holding companies have title to all APNs listed in Exhibit A. Ownership of these parcels by U.S. Borax and its subsidiaries and/or holding companies is documented in Exhibit P. A true and correct copy of Exhibit P is attached hereto and incorporated herein.

7. For each individual/entity identified in paragraph 6 that individual/entity appeared on the

1 title during the following time: U.S. Borax and its subsidiaries and/or holding companies have  
2 had title to the APNs identified in Exhibit A from the time of purchase as set forth in Exhibit A to  
3 present.

4 **Leases**

5 8. U.S. Borax and subsidiaries and/or holding companies do not lease property that overlies  
6 the Antelope Valley Area of Adjudication as decided by this court.

7 9. N/A.

8 10. N/A.

9 11. N/A.

10 12. N/A.

11 13. Clean Energy Fuels Corporation and EIF Mojave LLC lease property from U.S. Borax  
12 which overlies the Antelope Valley Area of Adjudication as decided by this court and is identified  
13 by the following APNs:

14 Clean Energy Fuels Corporation: APN 232-040-16 Parcel 2 and APN 232-040-14 Parcel 1.

15 EIF Mojave LLC 1: APN 232-040-18 Parcel A.

16 EIF Mojave LLC 2: APN 232-040-19 Parcel B.

17 EIF Mojave LLC 3: APN 232-040-24 Parcel B.

18 14. The total acreage by parcel is:

19 Clean Energy Fuels Corporation: APN 232-040-16 Parcel 2 (35.76 Acres) and APN 232-040-14  
20 Parcel 1 (299.27 Acres)

21 EIF Mojave LLC 1: APN 232-040-18 Parcel A (3.36 Acres)

22 EIF Mojave LLC 2: APN 232-040-19 Parcel B (4.62 Acres)

23 EIF Mojave LLC 3: APN 232-040-24 Parcel B (4.35 Acres)

24 15. The lease between U.S. Borax and Clean Energy Fuels Corporation provides at Section  
25 2.4 that U.S. Borax, as Lessor, shall be responsible for providing process and fire water supplies  
26 to the premises pursuant to a Water Supply Services agreement that is appended to the lease.

27 The lease between U.S. Borax and EIF Mojave LLC provides, at Sections 4.6 and 6.2 of the  
28 Thermal Sales and Shared Services Agreement appended to the lease, that U.S. Borax shall make

1 arrangements to supply water to EIF Mojave LLC as well as supply a fire protection system. The  
2 leases between U.S. Borax as Lessor and Clean Energy Fuels Corporation and EIF Mojave LLC  
3 as Lessees, designated as Exhibit D1 and Exhibit D2, respectively, contain proprietary and  
4 privileged confidential information. They can be made available subject to a confidentiality  
5 agreement or protective order to be agreed upon with counsel for U.S. Borax.

6 16. N/A.

7 17. N/A.

8 18. To the best of my knowledge, none of the Lessees claim groundwater rights as to the  
9 leased parcels identified in paragraph 15.

10 **Water Meter Records**

11 19. U.S. Borax currently measures the groundwater production on the above referenced  
12 properties by electronic water meters through a Supervisory Control and Data Acquisition  
13 (SCADA) system that continuously monitors water flow and provides a data logging function to  
14 record totalized volumes. U.S. Borax has water meter records in the form of either monthly or  
15 annual reports for the following years: 2000 through 2004, 2011, and 2012. Records for the  
16 years 2000 through 2004 were compiled through manual reading of water meters, tabulation of  
17 those readings as part of annualized summary sheets, and incorporation of those summary sheets  
18 into annual reports. Records for the years 2011 and 2012 were compiled through the use of the  
19 SCADA system. U.S. Borax retains the following records for the years 2000 through 2004:

20 Annual Total U.S. Borax Water Usage 1958 – 2009, a document containing annual water  
21 meter data for the years 2000 through 2004

22 U.S. Borax retains the following records for the years 2011 and 2012:

23 Compilation of Monthly Water Summaries for January 2011 through November 2011, a  
24 document containing monthly water meter data for the months January 2011  
25 through November 2011

26 Monthly Water Summary for December 2011, a document containing monthly water  
27 meter data for the month of December 2011

28 Monthly Water Summaries for January 2012 through September 2012, a set of documents

1 containing water meter data for every month in 2012 with the exception of  
2 October, November, and December (summaries for these months are not available  
3 at this time)

4 The records identified above contain detailed information regarding U.S. Borax's water usage and  
5 production, including but not limited to information regarding groundwater from areas within the  
6 Antelope Valley Area of Adjudication, groundwater from areas outside the Antelope Valley Area  
7 of Adjudication, State Water Project water supplied by a State Water Contractor, and other  
8 sources providing water to U.S. Borax. These records were used in the calculation of the  
9 production amounts set forth in paragraph 20 below. Because these records contain proprietary  
10 and privileged confidential information regarding other sources of water, distribution and usage  
11 of water at U.S. Borax's facilities and properties, and technical calculations related to supply,  
12 processing, and usage, they are not produced here. Designated Exhibit E, these records can be  
13 made available subject to a confidentiality agreement or protective order to be agreed upon with  
14 counsel for U.S. Borax.

15 20. Exhibit F sets forth the total yearly production amounts by metered water well on the  
16 above referenced properties for the years 2000 through 2004, 2011, and 2012. These amounts  
17 were calculated through use of the records designated as Exhibit E and explained in paragraph 19  
18 above. A true and correct copy of Exhibit F is attached hereto and incorporated herein.

19 **State Water Project Purchases**

20 21. U.S. Borax purchases State Water Project water from a State Water Contractor for use by  
21 U.S. Borax on the properties referenced above. Exhibit G contains true and correct copies of the  
22 invoices for delivery of State Water Project Water to the properties referenced above.

23 22. Exhibit H sets forth the total yearly State Water Project water deliveries to the properties  
24 referenced above for a time period including the years 2000 through 2004, 2011, and 2012.  
25 These amounts were calculated through the use of the records in Exhibit G. A true and correct  
26 copy of Exhibit H is attached hereto and incorporated herein.

27 **Pump Tests/ Electric Records**

28 23. N/A.

1 24. N/A.

2 25. N/A.

3 26. U.S. Borax is not producing pump test records because: Flow measurements are made  
4 with electronic water meters through a SCADA system that continuously monitors water flow and  
5 provides a data logging function to record totalized volumes at the inlet to the processing plant  
6 water storage tank. Measurements are not estimated based upon pump test/pump efficiency data  
7 and electrical use records.

8 27. I am not aware of any other pump tests having been performed on the properties  
9 referenced above.

10 **Pump Tests/Diesel Records**

11 28. N/A.

12 29. N/A.

13 30. N/A.

14 31. U.S. Borax is not producing pump test records because: Diesel driven pumps are not used  
15 for water pumping from groundwater wells.

16 32. I am not aware of any other pump tests having been performed on the properties  
17 referenced above.

18 **Crop Duties and Irrigated Acres**

19 33. N/A.

20 34. N/A.

21 **Other Sources of Water**

22 35. On the properties referenced above, U.S. Borax received water from sources other than  
23 groundwater pumped within the Basin or State Water Project Water. Exhibit O sets forth the  
24 source of the water and the amounts received for the years 2000 through 2004, 2011, and 2012.  
25 The amounts identified in Exhibit O were calculated from various sources including the meter  
26 reports designated as Exhibit E and explained in paragraph 19 above. A true and correct copy of  
27 Exhibit O is attached hereto and incorporated herein.

28 **Use of Water**

1 36. U.S. Borax used 3,745 acre feet of water in 2000 in borate mining and milling processes.  
2 This number is calculated using technical data including the figures set forth above in Exhibits F,  
3 H, and O. Borate mining and milling processes include the production of a variety of refined  
4 odium borate products by dissolving the raw borate salts (ore) in water and recrystallizing the  
5 boron in various hydration states and chemical combinations. Raw borate ore is also processed  
6 with water, steam, and other reactants to produce various boric acid products. In addition to the  
7 above and typical water uses, water is also used in the mine pit area for dust suppression and to  
8 make steam for co-generation of electricity which is used in the processing plant as well as in  
9 liquification of natural gas which is used to fuel vehicles used in the mine and processing plant.

10 37. U.S. Borax used 3,225 acre feet of water in 2001 for borate mining and milling processes  
11 as described above. This number is calculated using technical data including the figures set forth  
12 above in Exhibits F, H, and O.

13 38. U.S. Borax used 3,407 acre feet of water in 2002 for borate mining and milling processes  
14 as described above. This number is calculated using technical data including the figures set forth  
15 above in Exhibits F, H, and O.

16 39. U.S. Borax used 3,380 acre feet of water in 2003 for borate mining and milling processes  
17 as described above. This number is calculated using technical data including the figures set forth  
18 above in Exhibits F, H, and O.

19 40. U.S. Borax used 3,685, acre feet of water in 2004 for borate mining and milling processes  
20 as described above. This number is calculated using technical data including the figures set forth  
21 above in Exhibits F, H, and O.

22 41. U.S. Borax used 3,512 acre feet of water in 2011 for borate mining and milling processes  
23 as described above. This number is calculated using technical data including the figures set forth  
24 above in Exhibits F, H, and O.

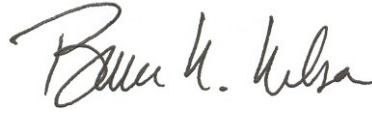
25 42. U.S. Borax used 3,021 acre feet of water in 2012, not including the months of October,  
26 November, and December, for borate mining and milling processes as described above. This  
27 number is calculated using technical data including the figures set forth above in Exhibits F, H,  
28 and O.

1 43. Other than what is declared above, U.S. Borax did not produce or use water within the  
2 Antelope Valley Area of Adjudication for 2000 through 2004, 2011, and 2012.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct. Executed this 31st day of January 2013.

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6 BRUCE N. NELSON, P.E.  
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